

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: : CIVIL ACTION  
:   
CIGNA CORP. ERISA LITIGATION : MASTER FILE NO. 03-CV-00714

MEMORANDUM AND ORDER

Fullam, Sr. J.

August , 2004

The CIGNA defendants have filed a motion to dismiss the consolidated class action complaint in this case, invoking Fed. R. Civ. P. 12(b)(6). Such a motion tests only whether, as a matter of pleading, the complaint manages to allege potentially valid claims. It is reasonably clear that, as a matter of pleading, the consolidated complaint passes muster.

Although the briefs on both sides deal only with Rule 12(b)(6), it is noteworthy that counsel on both sides refer to matters outside the pleadings.

I therefore conclude that defendants' motion should be treated as one for summary judgment under Fed. R. Civ. P. 56, if the CIGNA defendants contend that there are no factual disputes with respect to one or more issues which may be totally or partially dispositive. The existing record seems to suggest that there may well be factual disputes as to a great many issues, but that some issues may be amenable to summary disposition. To that end, the moving defendants will be required, within 30 days, to file, and provide to opposing counsel, a concise list of facts

believed to be undisputed, which may be dispositive of one or more issues in the case. Plaintiffs will have an opportunity to respond, within 30 days thereafter. The parties may file evidentiary materials in support of their positions, but need not duplicate materials already in the record.

An order follows.

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ORDER

AND NOW, this            day of August 2004, upon  
consideration of the motion of the CIGNA defendants to dismiss  
the consolidated class action complaint, IT IS ORDERED:

1.    That the motion shall be treated as a motion for  
summary judgment under Fed. R. Civ. P. 56.

2.    That the parties shall supplement the record in  
conformity with the accompanying memorandum.

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John P. Fullam, Sr. J.